



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Killeen Pest Control, Inc.--Request for
Reconsideration
File: B-223778.2
Date: January 7, 1987

DIGEST

A protest file closed because the protester failed to file comments on the agency report within 7 working days from the date that the agency report was due is reopened since doubt as to the protester's interest in continuing the protest is resolved in its favor; however, protest is dismissed because it involves an alleged apparent solicitation impropriety which should have been filed before bid opening.

DECISION

Killeen Pest Control, Inc. (Killeen), requests that we reconsider our September 19, 1986, dismissal of its protest against alleged inaccurate quantity estimates under invitation for bids (IFB) No. DAKF48-86-B-0120, issued by the Department of the Army. We dismissed the protest because we did not receive Killeen's comments responding to the Army's report on the protest or a statement of continued interest in the protest within 7 working days after receipt of the report, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1986).

Killeen initially protested to our Office on July 29, 1986. In our acknowledgment notice to Killeen of July 30, 1986, we advised Killeen that the Army's administrative report on the matter was due in our Office on September 4, 1986, and that we would assume that Killeen received a copy of the report by that date. The notice further advised Killeen to notify our Office promptly if it did not receive a copy of the report on the scheduled due date and warned that unless we received its comments or a statement that it wished to have a decision based on the existing record within 7 working days from our receipt of the report we would close the file without action. We received the Army's report on September 4, 1986. However, we did not receive any comments on the report from Killeen within the required comment period and we closed our file without action on September 19, 1986.

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In its request for reinstatement of the protest, Killeen advises that it sent a letter to our Office on September 5, 1986, indicating that it had not received a copy of the Army's report and that we should have received it within the 7 working day comment period. A copy of the letter was included with its request for reinstatement of the protest. Further, Killeen advises that it telephonically advised our Office a few days before the due date of the report that it had not received a copy of the report and that it was still interested in pursuing the protest. After review of the circumstances involved, we reopen the case by resolving the doubt concerning Killeen's interest in its favor. However, we dismiss the protest as untimely.

The IFB was issued on June 12, 1986, to fulfill the Army's need for pest control services on an as-required basis. On June 30, 1986, Killeen sent a letter to the contracting officer, in which it raised several questions concerning the terms of the IFB, including the accuracy of the estimated quantities. The contracting officer answered Killeen's questions by letter dated July 14, 1986, and Killeen was specifically advised that all estimated quantities were made as accurate as possible and reflected the anticipated requirements for the contract period. Killeen sent another letter to the contracting officer, dated July 7, 1986, raising additional questions about the IFB. The contracting officer responded to these questions by letter dated July 15, 1986. Bid opening was held on July 17, 1986, and five bidders, including Killeen, responded to the IFB. The Army awarded the contract to the lowest responsive, responsible bidder on July 29, 1986. Killeen's protest against the accuracy of the estimated quantities was received in our Office on the same date.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening be received in our Office or at the agency prior to bid opening in order to be considered timely. See 4 C.F.R. § 21.2(a)(1) (1986). The purpose of this time limitation is to enable the contracting agency to decide an issue while it is most practicable to take effective action where the circumstances warrant. See Ratcliffe Corporation--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 C.P.D. ¶ 395. Since the alleged inaccuracy of the estimated quantities was apparent to Killeen prior to bid opening, its protest filed with our Office after bid opening is untimely. While Killeen did raise questions with the agency concerning the specifications prior to bid opening, no protest was filed.

We note that in commenting on the agency report, Killeen indicates that the Army advised it that it could not protest the IFB until after bids had been opened. While it is unfortunate that Killeen may have been misled, this does not excuse the untimeliness of its protest. Our regulations have been published in the Federal Register, and protesters therefore are charged with constructive knowledge of our filing rules. Ratcliffe Corporation--Request for Reconsideration, B-220060.2, supra.

Therefore, the protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong
Deputy Associate General Counsel